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9 *Attorneys for Court-Appointed Monitor,*
Thomas W. McNamara

11 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

13 THOMAS W. MCNAMARA, as the Court-
Appointed Monitor for AMG Capital
14 Management, LLC; BA Services LLC; Black
Creek Capital Corporation; Broadmoor Capital
15 Partners, LLC; Park 269, LLC; C5 Capital
LLC; DF Services Corp.; DFTW Consolidated
16 [UC] LLC; Impact BP LLC; Level 5 Apparel
LLC; Level 5 Capital Partners LLC; Level 5
17 Eyewear LLC; Level 5 Motorsports, LLC;
Level 5 Scientific LLC; NM Service Corp.
18 (f/k/a/ National Money Service); PSB Services
LLC; Real Estate Capital LLC (f/k/a/ Rehab
19 Capital I, LLC); Sentient Technologies; ST
Capital LLC; Westfund LLC; Eclipse
20 Renewables Holdings LLC; Scott Tucker
Declaration of Trust, dated February 20, 2015;
21 West Race Cars, LLC; and Level 5
Management LLC; and their successors,
22 assigns, affiliates, and subsidiaries,

23 Plaintiff,

24 v.

25 STEALTH POWER, LLC (f/k/a Energy
Xtreme, LLC), a Texas Limited Liability
Company,

26 Defendant.
27
28

Case No.

**MONITOR'S COMPLAINT FOR (1)
ACCOUNT STATED, AND (2) BREACH
OF CONTRACT**

1 Plaintiff, Thomas W. McNamara (“Plaintiff” or “Monitor”), in his capacity as the Court-
 2 appointed Monitor, hereby brings the following Complaint against Stealth Power, LLC
 3 (“Stealth”), and alleges the following:

4 PARTIES

5 1. Plaintiff is the Court-appointed Monitor in the related case *Federal Trade*
 6 *Commission v. AMG Services, Inc., et al.*, 2:12-cv-00536-GMN (VCF) (D. Nev.) (“*FTC v. AMG*
 7 *Services*”), appointed by the Order Appointing Monitor and Freezing Assets entered
 8 November 30, 2016 (ECF No. 1099) (the “Monitor Order”). A true and correct copy of the
 9 Monitor Order issued in *FTC v. AMG Services* is attached as **Exhibit A** and incorporated by
 10 reference. The Monitor Order directs the Monitor, *inter alia*, to preserve the value of the assets
 11 in the Monitorship Estate and authorizes the Monitor, *inter alia*, to institute actions to preserve or
 12 recover those assets. *See id.* at 12.

13 2. The Monitor Order defines the Monitorship Estate to include, *inter alia*, all assets
 14 of Scott Tucker (the individual defendant in *FTC v. AMG Services*) (“Tucker”) and all assets of
 15 the “Monitor Entities” which are identified to include: the corporate defendants named in *FTC v.*
 16 *AMG Services* (AMG Capital Management, LLC (“AMG Capital”), Level 5 Motorsports, LLC
 17 (“Level 5”), Black Creek Capital Corporation (“Black Creek”), and Broadmoor Capital Partners,
 18 LLC (“Broadmoor Capital”)); the corporate relief defendant named in *FTC v. AMG Services*
 19 (Park 269, LLC (“Park 269”)); and multiple Tucker related and controlled entities: BA Services
 20 LLC (“BA Services”), C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC,
 21 Impact BP LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC,
 22 Level 5 Scientific LLC, NM Service Corp. (f/k/a/ National Money Service) (“NMS”), PSB
 23 Services LLC, Real Estate Capital LLC (f/k/a/ Rehab Capital I, LLC), Sentient Technologies, ST
 24 Capital LLC, Westfund LLC, Eclipse Renewables Holdings LLC, Scott Tucker Declaration of
 25 Trust, dated February 20, 2015, West Race Cars, LLC, and Level 5 Management LLC, and their
 26 successors, assigns, affiliates, and subsidiaries.

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3. Defendant Stealth is a limited liability company organized and existing under the laws of the state of Texas, with a current principal place of business at 3300 Bee Caves Road, Suite 650, Austin, TX 78746.

4. Stealth is the successor in interest to Energy Xtreme, LLC (also a Texas limited liability company), and is responsible for Energy Xtreme's debts to Westfund. Allegations referring to Stealth shall be understood as including reference to earlier actions by predecessor entity Energy Xtreme.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter under 28 U.S.C. § 754, 28 U.S.C. § 1345, and 28 U.S.C. § 1367(a), and the doctrines of supplemental and ancillary jurisdiction. *See S.E.C. v. Bilzerian*, 378 F.3d 1100, 1107 (D.C. Cir. 2004) (“the receiver’s complaint was brought to accomplish the objectives of the Receivership Order and was thus ancillary to the court’s exclusive jurisdiction over the receivership estate”).

6. Venue in the District of Nevada is proper pursuant to 28 U.S.C. § 1391. Additionally, the Court retained jurisdiction of this matter for all purposes and appointed the Monitor on November 30, 2016 and this proceeding is supplemental to *FTC v. AMG Services*. *See Haile v. Henderson Nat’l Bank*, 657 F.2d 816, 822 n.6 (6th Cir. 1981) (“[W]here jurisdiction is ancillary, the post-jurisdictional consideration of venue is ancillary as well.”).

7. The Court may exercise personal jurisdiction over the Defendant pursuant to 28 U.S.C. § 1692 because the funds sought to be recovered are assets of the Monitorship Estate under the Court's Orders issued in *FTC v. AMG Services*.

ALLEGATIONS COMMON TO ALL COUNTS

8. One of plaintiff's duties as Court-appointed Monitor is to collect money due or owing to Monitor Entities, including Westfund.

9. Defendant Stealth borrowed money from Monitor Entity Westfund on several occasions, under several written agreements. Genuine and accurate copies of several of these written agreements are attached hereto as **Exhibit B**.

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1 10. Although the agreements are titled “Factoring and Security Agreement,” the
2 parties treated their relationship under the agreements essentially as a line of credit. Westfund
3 advanced Stealth working capital on several occasions (enabling Stealth to, among other things,
4 conduct operations and fulfill its contracts with Stealth customers), and Stealth made several
5 repayments to Westfund directly.

6 11. Given the numerous agreements, advances, and repayments between the parties,
7 daily interest calculation, and need to allocate repayments to interest vs. principal, the exact
8 amount due from Stealth at any particular time required detailed calculation.

9 12. On or about January 31, 2016 through February 1, 2016, Devin Scott, Stealth’s
10 Manager (and signatory on Stealth’s contracts with Westfund) exchanged several emails with
11 David Feingold of Westfund, with the subject lines “Workout Proposal” and “RE: Workout
12 Proposal.” **Exhibit C** is a genuine and accurate copy of said emails.

13 13. As stated by Mr. Scott in **Exhibit C**, Mr. Scott had met with Mr. Feingold and
14 Glenn Fisher approximately two weeks prior to the email, to discuss Stealth’s debt to Westfund
15 and work out a repayment proposal.

16 14. In Exhibit C, Mr. Scott proposed that the parties agree to \$533,950 as the amount
17 due as of January 31, 2016. He stated: “To date, \$550,000 has been advanced by Westfund to
18 either Stealth Power or Energy Xtreme over 9 transactions covering 5 POs with \$266,000 in
19 payments made to Westfund. ... As of 1/31, there has been a total of \$249,950 in interest and fees
20 incurred, leaving a total balance due of \$533,950.” In addition, Mr. Scott proposed a repayment
21 schedule by which the full sum Stealth owed Westfund would be repaid by mid-September 2016.

22 15. Westfund accepted Mr. Scott’s statement of the sum due on Stealth’s account as
23 \$533,950 (as of January 31, 2016), while noting that Westfund’s figures showed “a little
24 difference” with Mr. Scott’s proposed number. Westfund reiterated that 18% interest (calculated
25 on a daily basis) would continue to accumulate, as well as how payments would be allocated
26 against accrued interest and principal.

27 16. Stealth’s proposal having been accepted, it made several payments in February
28 and March 2016 to attempt to meet the workout proposal, specifically, \$40,000 on February 1,

1 \$59,641 on February 10, and \$15,000 on March 30. However, Stealth has failed to make full
2 payment on the \$533,950 owed as of January 31, 2016.

3 17. Interest continues to accumulate on Stealth's debt at a rate of 18% (calculated
4 daily).

5 18. In the contracts attached in Exhibit B, Stealth agreed to pay all costs and fees
6 incurred by Westfund in collecting amounts due including, without limitation, attorneys' fees
7 and costs.

8 **COUNT 1**

9 **ACCOUNT STATED**

10 19. Plaintiff repeats and realleges the allegations of each and every one of the prior
11 paragraphs, inclusive, as if fully set forth herein.

12 20. As of February 1, 2016, Stealth owed Westfund money from previous financial
13 transactions between Stealth (including its predecessor Energy Xtreme) and Westfund.

14 21. On or about February 1, 2016 (as a result of discussions from at least mid-January
15 2016), Stealth and Westfund, by words or conduct, agreed that the \$533,950 stated in Exhibit C
16 was the correct amount owed to Westfund as of January 31, 2016, with interest to accumulate
17 and payments to be treated as set forth in Exhibit C.

18 22. Stealth, by words or conduct, promised to pay the stated amount to Westfund.

19 23. Stealth has not paid Westfund all of the amount owed under this account.

20 24. The amount of money Stealth owes is \$533,950 as of January 31, 2016, minus
21 payments Stealth made to Westfund after January 31, 2016, plus agreed interest.

22 **COUNT 2**

23 **BREACH OF CONTRACT**

24 25. Plaintiff repeats and realleges the allegations of each and every one of the prior
25 paragraphs, inclusive, as if fully set forth herein.

26 26. The contracts attached in Exhibit B are valid and enforceable contracts, supported
27 by good and valuable consideration.

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6 || 29. Plaintiff has suffered damages as a direct and proximate result of the breach.

8 WHEREFORE, Plaintiff Monitor, on behalf of Monitor Entity Westfund, respectfully
9 prays for judgment in his favor and against Defendant Stealth as follows:

- 13 || 2. For attorneys' fees, expenses, and costs; and

15 || Dated: September 19, 2018

By: /s/ Edward Chang
Attorneys for Court-Appointed Monitor,
Thomas W. McNamara